FILED
FEB 10 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1169

In The

Supreme Court of the United States

October Term, 1988

UNITED TRANSPORTATION UNION,

Cross-Petitioner,

v.

L. LEE BEARDSLY, *et al.*,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION

BRUCE H. STOLTZE
(Counsel of Record)
BRICK, SECKINGTON, BOWERS,
SWARTZ & GENTRY, P.C.
550 39th Street, Suite 200
Des Moines, IA 50312
(515) 274-1450
Counsel for Individual Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Could the Court of Appeals properly resolve an outstanding controversy between the parties relating to the availability and necessity of arbitration after determining that the individual respondents had no right to recover at this time money damages in federal court?

2. Do the standards for reviewing a decision from the National Railroad Adjustment Board specified in 45 U.S.C. § 153 First (p) also apply to any arbitration conducted pursuant to contract to set contractual terms between a railroad and a union?

3. Could the Court of Appeals properly disregard under the facts of this case a union's interpretation of its own constitution when the court determined that interpretation did not comport with the clear language of the constitution and was thus unreasonable?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTION 2

STATUTES INVOLVED 3

STATEMENT OF THE CASE 3

REASONS WHY THE CROSS-PETITION SHOULD BE DENIED 4

I. The decision below granting the individual respondents' arbitration relief is not in conflict with this Court's decision in *DelCostello v. Brotherhood of Teamsters* and does not conflict with the decisions of the other court of appeals, and so does not need to be reviewed 5

II. The lower court decision does not conflict with the holding of this court in *Glover v. St. Louis-San Francisco Railway Co.*, 393 U.S. 324 (1969) 7

III. The decision of the court below regarding the interpretation of the UTU constitution does not conflict with the decisions of this court or any other courts 9

IV. The unique nature of this case means that the cross-petition raises no issues of national importance which this court should resolve .. 11

CONCLUSION 12

TABLE OF AUTHORITIES

Page

CASES:

Glover v. St. Louis-San Francisco Railway Co., 393 U.S. 324 (1969) 7, 8, 9

Monzillo v. Biller, 735 F.2d 1456, 1458 (D.C. Cir. 1984) 10

STATUTES:

28 U.S.C. § 1254(1) 2

Railway Labor Act

45 U.S.C. § 153 First (p) 7, 9

Regional Rail Reorganization Act

45 U.S.C. § 797b 3

45 U.S.C. § 797c 3

45 U.S.C. § 797m 3

Rock Island Transition and Employee Assistance Act

45 U.S.C. § 1004 3

45 U.S.C. § 1017 3

No. 88-1169

In The

Supreme Court of the United States

October Term, 1988

UNITED TRANSPORTATION UNION,

Cross-Petitioner,

v.

L. LEE BEARDSLY, *et al.*,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION

Individual respondents, former employees of the Chicago, Rock Island & Pacific Railroad Company ("Rock Island"), respectfully request that this Court deny the cross-petition for writ of certiorari filed by cross-petitioner, United Transportation Union ("UTU"), seeking review of the Court of Appeals for the Eighth Circuit's opinion in this case.

OPINIONS BELOW

The opinion of the Court of Appeals for the Eighth Circuit is reported at 850 F.2d 1255 (Cross-Pet. App. 1a-46a). That opinion was issued upon a request for rehearing and superseded the court's earlier opinion

which was reported at 836 F.2d 1493 (Cross-Pet. App. 47a-91a). The opinions, rulings, orders, and judgment of the United States District Court for the Southern District of Iowa which form the basis for the Court of Appeal's opinion are all unreported (Cross-Pet. App. 93a-127a).

JURISDICTION

The decision of the Court of Appeals upon rehearing was issued on June 15, 1988. The Cross-Petitioner did not file another petition for rehearing. However, the Chicago & North Western Transportation Company ("CNW") and the Brotherhood of Locomotive Engineers ("BLE") did file petitions for rehearing and suggestions for hearing en banc which were denied on September 14, 1988 (Cross-Pet. App. 92a). CNW and BLE filed their petitions for a writ of certiorari on December 13, 1988. *See* Petitions in Nos. 88-968 & 88-994. The jurisdiction of this Court to review the judgment of the Eighth Circuit is invoked under 28 U.S.C. § 1254(1).

Cross-petitioner filed its cross-petition on January 12, 1989. The cross-petition does not state whether it was filed with respect to No. 88-968 or No. 88-994 or both. Jurisdiction for the filing of the cross-petition is asserted under Rule 19.5. Respondents received their service copies on January 11, 1989.

STATUTES INVOLVED

Sections 105 and 122 of the Rock Island Transition and Employee Assistance Act, 45 U.S.C. §§ 1004, 1017; and 45 U.S.C. §§ 797b, 797c, and 797m are set forth at Cross-Pet. App. 128a-133a. Section 3 First (p) of the Railroad Labor Act is set forth in the Appendix to this brief at 1a.

STATEMENT OF THE CASE

The facts in this matter have been extensively discussed in the various documents filed by the parties. The Court should refer to the petitions, cross-petitions, and briefs in opposition that have already been filed in this matter. Those documents describe the factual background of this dispute and the decision of the Eighth Circuit. There are certain clarifying facts which the Court should be aware of in examining the UTU cross-petition:

1. The CNW and the section of the UTU representing the ground service employees submitted to arbitration a dispute regarding the seniority which should be allocated to certain ground service employees under the March 4th Agreement. An arbitrator was appointed by the National Mediation Board to hear the arbitration. The arbitrator heard evidence regarding this matter, and issued his decision on May 20, 1983.

2. Contrary to the misinterpretation of the UTU at pages 11-13 of its cross-petition, the Eighth Circuit determined that this ground service arbitration was "fundamentally improper because the arbitrator deferred to an

invalid and fundamentally unfair implementing agreement" (Cross-Pet. App. 34a). As such, the arbitrators decision "was not in any way derived from the wording or purposes of the collective bargaining agreement [i.e. the March 4th Agreement]'". (Cross-Pet. App. 37a). Thus, the court held the arbitrator exceeded his jurisdiction and ordered the arbitration award set aside and voided. (Cross-Pet. App. 38a).

3. The court also noted that the UTU constitution required that the union take a unified position before submitting a dispute to arbitration (Cross-Pet. App. 13a). The court based its opinion on the wording of Article 90 of the UTU constitution. *See* Cross-Pet. App. 13a n.8 & 14a n.9 (quoting Article 90 of the UTU constitution). In reaching its conclusion, the lower court rejected the UTU argument that it could properly determine that Article 90 was not applicable to the case. It rejected that argument as being nothing more than "an *ad hoc* decision made to avoid the union's responsibilities in this particular dispute" (Cross-Pet. App. 35a n.12). The Court further stated this particular finding was not considered necessary for its prior holding in setting aside the arbitration award. (Cross-Pet. App. 34a).

REASONS WHY THE CROSS-PETITION SHOULD BE DENIED

The cross-petition should be denied because the action taken by the Eighth Circuit to declare that arbitration was available to the individual respondents does not conflict with the decisions of this Court or any other

court. Moreover, the cross-petition incorrectly states the law regarding the standard of review for the arbitration award at issue. That argument may properly be disregarded by this Court. The cross-petition also does not present a significant issue regarding the lower court's interpretation of the union's constitution. Finally, given the unique circumstances surrounding this case, the cross-petition does not present an important issue of federal law.[1]

I. The decision below granting the individual respondents arbitration relief is not in conflict with this Court's decision in *DelCostello v. Brotherhood of Teamsters* and does not conflict with the decisions of the other courts of appeals, and so does not need to be reviewed.

As the individual respondents have noted in their previous opposition briefs, the BLE, the CNW and now the UTU attempt to obtain a review on an issue created by a misreading of the Eighth Circuit's decision. *See* respondents brief in opposition in No. 88-968 at pp. 7-12 (hereinafter "Opposition to BLE"); respondents brief in opposition in No. 88-994 at pp. 7-14 (hereinafter "Opposition to CNW"). The respondents' arguments will not be repeated in full, but are summarized below.

This case did not involve a suit by the individual respondents in which they claimed that there was a statutory violation based upon the failure of the unions or the CNW to grant them arbitration. Instead, the suit focused

---

[1] The Court should note that the cross-petition does not contain any argument or factual support for Question 2 in the Questions Presented (Cross-Pet. i). The Court should ignore that Question.

on claims for substantive relief in the form of money damages and challenged one arbitration award and various implementing agreements. The defendants below argued that the individual respondents should have gone to arbitration and that the remedy of arbitration had now expired. The individual respondents argued that they did not need to go to arbitration. While holding that some of the individual respondents could not seek money damages in federal court at this time, the court below declared that arbitration was available to them. Thus, contrary to the assertion of the UTU, the decision below was not based on a finding that a claim for arbitration was available even though the *DelCostello* period had expired. Rather, the court declared that nothing in the March 4th Agreement or in the RITEA prevented the claim from going to arbitration, with the arbitrator determining the timeliness of the arbitration.

Moreover, the Eighth Circuit's opinion established a consistent scheme requiring that the individual respondents first seek arbitration of any dispute relating to the establishment of seniority rights under the March 4 Agreement before seeking review in federal court of an arbitration award. Thus, the court examined the validity of the one claim that had gone to arbitration, while referring all other claims to arbitration. The decision does not conflict with any decisions of this Court or any other court, because if arbitration is available to an individual, that individual is generally required to seek arbitration before contesting the arbitration in federal court. The court of appeals' decision resolved a dispute between the parties as to whether arbitration was required and

whether it was still available to the individual respondents.

Finally, the court's decision also comports with general concepts of time limits for arbitration. Generally the parties, and not a statute or a court, determine the time period for requesting arbitration. In this case, the March 4 Agreement creating certain arbitration rights did not contain a time period for commencing arbitration. Therefore, the *DelCostello* six month period does not apply to the Eighth Circuit's declaration that arbitration was available. Instead, an arbitrator must decide whether an arbitration procedure would be timely or whether it is barred by laches. That approach is consistent with other law. *See* Opposition to BLE at pp. 11-14; Opposition to CNW at pp. 11-14.

II. The lower court decision does not conflict with the holding of this court in *Glover v. St. Louis-San Francisco Railway Co.*, 393 U.S. 324 (1969).

Cross-Petitioner argues (1) that *Glover* requires that there be a finding of collusion between a railroad and union to sustain federal court jurisdiction; and (2) that the Court of Appeals misapplied the law, by failing to apply to the present case the legal analysis mandated by 45 U.S.C. § 153 First (p). Cross-petitioner's arguments present no issue for review.

Glover did not hold that a finding of collusion was necessary under the Railway Labor Act to set aside an arbitration procured as a result of a previous breach of the duty of fair representation by the union. Instead, that case focused on and dealt with the court's jurisdiction to

hear a case involving claims of unfair representation by a union and discriminatory enforcement of a contract. *Id.* at 328-29. The court in *Glover* held that since the Adjustment Board had no power to give the kind of relief necessary against both parties, the case could properly be brought in federal court to give complete and meaningful relief. *Id.* at 329. It did not deal with nor require that collusion be an element of all cases involving claims of unfair representation, breach of contract or invalidity of arbitration awards.

In the present case, the court below found that numerous improprieties were committed by cross-petitioner UTU. The court below found the arbitrator impermissably had deferred to an invalid and fundamentally unfair implementing agreement. (Cross-Pet. App. 34a). The arbitrator "without coherent or logical reasons" deferred to the improperly negotiated agreement. (Cross-Pet. App. 36a). The award was "without foundation in reason and fact" and therefore exceeded his authority or jurisdiction. (Cross-Pet. App. 37a). The fundamental purpose of the March 4 Agreement was not satisfied. (Cross-Pet. App. 38a). Since the arbitration establishes contract terms, the "dispute", like in *Glover*, is one between some employees on one hand and the union and management together on the other which is the sufficient tying of conduct to allow federal court jurisdiction. Furthermore, the Railroad Adjustment Board lacks the power to order the relief necessary to give complete and meaningful relief. To accept the Cross-Petitioner UTU's argument, would be to allow an arbitration award to remain in effect even though that arbitration award fails in its essential purpose. Such a result is illogical and unsound.

The decision in this case does not conflict with the holding of *Glover*.

Next, cross-petitioner states that the Eighth Circuit violated the explicit standards for arbitration review set forth in Section 3 First (p) of the Railway Labor Act, 45 U.S.C. § 153 First (p) (Cross-Respondents App. 1a). Cross-petitioner's argument, however, is not supported by the clear language of the statute. That section deals with appeals from an order of a *division of the Adjustment Board*. This case did not involve an appeal from the *Adjustment* Board, but involved an appeal from an *arbitration* board. The argument by cross-petitioners ignores that clear statutory language. The cross-petitioner cites no lower court authority or support for its argument other than this citation to a clearly inapplicable statute. No issue is engendered on this issue for review by this Court.

III. The decision of the court below regarding the interpretation of the UTU constitution does not conflict with the decisions of this court or any other courts.

Cross-Petitioner argues that the Eighth Circuit should not have interpreted Article 90 of the UTU constitution, but should have left that interpretation solely to the UTU (Cross-Pet. 19-20). Cross-Petitioner claims that without a finding of "bad faith or arbitrary action" the court should not have held that the UTU acted improperly by not taking a unified position into the negotiations regarding seniority.

Yet, the lower court examined the arguments by the UTU and CNW that the UTU properly determined that

Article 90 did not apply to the present situation (Cross-Pet. App. 35a n.12). The court stated that:

> Searching the record, however, we find no persuasive evidence that this exemption [from the provisions of Article 90] was anything more than an *ad hoc* decision made to avoid the union's responsibilities in this particular dispute. Moreover, we find nothing in the March 4th Agreement which would conflict with the unified procedure outlined in the UTU constitution.

Cross-Pet. App. 35a n.12. The Eighth Circuit, therefore, carefully examined the argument now being made by the UTU, and found that the argument was not supported by the record.

Normally, a union's interpretation of its own organic documents will be accepted by a court, unless that interpretation is unreasonable or done in bad faith. *See, e.g., Monzillo v. Biller*, 735 F.2d 1456, 1458 (D.C. Cir. 1984). Here the court essentially held that the proposed interpretation was unreasonable, since it did not comport with the language in Article 90 and with the UTU's own internal decision in *Tucumcari*. Because the court did not find that the interpretation was reasonable, it was proper for the Court to base its analysis on the Court's reasonable interpretation.

No showing has been made by Cross-Petitioner that the decision regarding the interpretation of Article 90 conflicts with the decisions of any other court. Moreover, cross-petitioner does not cite to anywhere in the record which indicates that the lower court's interpretation was in error. Since the lower court examined the entire record in response to the same argument now being advanced by cross-petitioner and found nothing to support the

argument, the Court should not allow cross-petitioner to come forward now and try to overturn that decision without supplying some references which support its underlying position.[2] The Court should, therefore, find that the cross-petitioner's argument does not present an issue that this court needs to resolve.

IV. The unique nature of this case means that the cross-petition raises no issues of national importance which this court should resolve.

As respondents have noted in the other opposition briefs, this case is unique in many ways. *See* Opposition to BLE at 14-16; Opposition to CNW at 19-20. The issues raised by Cross-Petitioner are not giving rise to any other disputes which have created conflicting decisions of other courts of appeals. Moreover, the factual situation giving rise to this case is unique, and will doubtless never be repeated.

Because this case is unique, resolution of any issues raised in the cross-petition will not be of national importance. The Court should, therefore, deny the cross-petition.

---

[2] It should also be noted that this portion of the lower court's decision was expressly stated by the Court to be "not necessary to our holding" i.e. the holding that the arbitration award should properly be set aside. (See Opinion at Cross-Pet. App. 34a)

CONCLUSION

For the above reasons, the UTU's cross-petition for writ of certiorari should be denied.

Respectfully submitted,

BRUCE H. STOLTZE
(Counsel of Record)
BRICK, SECKINGTON, BOWERS,
SWARTZ & GENTRY, P.C.
550 39th Street, Suite 200
Des Moines, IA 50312
(515) 274-1450
Counsel for Individual Respondents

ADDITIONAL STATUTE INVOLVED

Section 3 First (p) of the Railway Labor Act, 45 U.S.C. § 153 First (p), states:

> If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be conclusive on the parties, and except that the petition shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board: Provided, however, That such order may not be set aside except for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.